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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/980,573	02/06/2002	Harald Genger	22054	5984
535	7590	09/19/2005	EXAMINER	
THE FIRM OF KARL F ROSS 5676 RIVERDALE AVENUE PO BOX 900 RIVERDALE (BRONX), NY 10471-0900			FOREMAN, JONATHAN M	
			ART UNIT	PAPER NUMBER
			3736	

DATE MAILED: 09/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/980,573

Applicant(s)

GENGER ET AL.

Examiner

Jonathan ML Foreman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4,8,10-12,14-17 and 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,4,8,10-12 and 14-16 is/are allowed.
- 6) ☒ Claim(s) 17 and 19 is/are rejected.
- 7) ☐ Claim(s) 2 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the specification fails to include proper antecedent basis for the foreheads support element being transverse to the tubular member and having free ends on opposite sides of a central portion, an electrode being on each of the ends and an electrode being on the central portion.

Claim Objections

2. Claims 1, 11, 12 and 17 objected to because of the following informalities: claims 1 and 12 set forth a “central portion” and then later a “central region”. The Examiner suggests changing “region” to “portion” to maintain consistency. Claim 11 depends from a cancelled claim. Claim 17 states “the measuring circuit arrangement the measuring circuit arrangement”. Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,199,550 to Wiesmann et al. in view of U.S. Patent No. 6,167,298 to Levin and further in view of U.S. Patent No. 6,171,258 to Karakasoglu et al.

In reference to claim 17, Wiesmann et al. discloses a breathing mask adapted to fit over a mouth and nose worn by emergency personnel (Figure 3). Wiesmann et al. discloses a sensor device having three sensor elements (20, 22, 70) engageable with the forehead region of the wearer, a measuring circuit arrangement for producing data in accordance with the measured values (Col. 5, lines 62 – 67) detected by the sensor device, characterized in that the circuit is partially integrated into a forehead support element (Col. 5, lines 25 – 27), and there is a signal transmission device for cord-less transmission of the data produced by the measuring circuit and a data recording device (Col. 13, line 55 – Col. 14, line 33). However, Wiesmann et al. fails to disclose the sensor elements being electrode elements for detecting brain electrical potentials. Levin discloses a device having electrode elements (10) worn against the forehead region of a user (Col. 4, lines 39 – 42) for detecting brain electrical potentials (Col. 4, lines 37 – 39). It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the sensors as disclosed by Wiesmann et al. with electrodes to detect brain potentials as taught by Levin in order to allow monitoring of an emergency personnel's brain wave patterns to determine if the subject is in an alert mental state (Col. 2, lines 17 – 26). Wiesmann et al. in view Levin discloses forwarding data to a signal transmission device, but fail to disclose a data compression device for forwarding a compressed data set to the signal transmission device. However, Karakasoglu et al. teaches a data compression device for forwarding compressed data to a signal transmission device (Col. 5, line 57 – Col. 6, line 27). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device as disclosed by Wiesmann et al. in view of Levin to include a data compression device for forwarding compressed data to a signal transmission device as taught by Karakasoglu et al. in order to suppress background noise prior to transmission.

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5. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,199,550 to Wiesmann et al. in view of U.S. Patent No. 6,167,298 to Levin and further in view of U.S. Patent No. 6,230,049 to Fischell et al.

In reference to claim 19, Wiesmann et al. discloses a breathing mask adapted to fit over a mouth and nose worn by emergency personnel (Figure 3). Wiesmann et al. discloses a sensor device having three sensor elements (20, 22, 70) engageable with the forehead region of the wearer, a measuring circuit arrangement for producing data in accordance with the measured values (Col. 5, lines 62 – 67) detected by the sensor device, characterized in that the circuit is partially integrated into a forehead support element (Col. 5, lines 25 – 27), and there is a signal transmission device for cord-less transmission of the data produced by the measuring circuit and a data recording device (Col. 13, line 55 – Col. 14, line 33). However, Wiesmann et al. fails to disclose the sensor elements being electrode elements for detecting brain electrical potentials. Levin discloses a device having electrode elements (10) worn against the forehead region of a user (Col. 4, lines 39 – 42) for detecting brain electrical potentials (Col. 4, lines 37 – 39). It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the sensors as disclosed by Wiesmann et al. with electrodes to detect brain potentials as taught by Levin in order to allow monitoring of an emergency personnel's brain wave patterns to determine if the subject is in an alert mental state (Col. 2, lines 17 – 26). Wiesmann et al. in view Levin discloses a measurement data recording device, but fails to disclose the data recording device being an approximately postage stamp-size memory card element that is releasably fitted. Fischell et al. discloses a wireless EEG monitoring system wherein the data recording device is an approximately postage stamp-size memory card element that is releasably fitted (Col. 63 – 64). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the data recording

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device as disclosed by Wiesmann et al. in view Levin to be an approximately postage stamp-size memory card element that is releasably fitted as taught by Fischell et al. in order to store large amounts of data (Col. 6, lines 60 – 63).

Allowable Subject Matter

6. Claims 1, 4, 8, 10 – 12 and 14 – 16 are allowable pending minor informalities as set forth above.

Response to Arguments

7. Applicant's arguments filed 7/5/05 have been fully considered but they are not persuasive. In regards to claim 19, Applicant merely included the limitations of claim 20. Claim 20 had previously been rejected as being unpatentable over U.S. Patent No. 6,199,550 to Wiesmann et al. in view of U.S. Patent No. 6,167,298 to Levin and further in view of U.S. Patent No. 6,230,049 to Fischell et al. In regards to claim 17, Applicant amended the claim to include 3 electrode elements and included the limitations of claim 18. However, Wiesmann et al. discloses a sensor device having three sensor elements (20, 22, 70) engageable with the forehead region of the wearer, and claim 18 had previously been rejected as being unpatentable over U.S. Patent No. 6,199,550 to Wiesmann et al. in view of U.S. Patent No. 6,167,298 to Levin and further in view of U.S. Patent No. 6,171,258 to Karakasoglu et al.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the

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THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

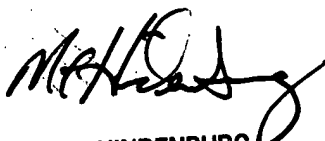
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan ML Foreman whose telephone number is (571)272-4724. The examiner can normally be reached on Monday - Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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